

EXHIBIT J

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

C.A. No. 6:05-cv-424-LED-JDL

ADVANCEME, INC.,)
Plaintiff)
vs.)
RAPIDPAY LLC, BUSINESS CAPITAL)
CORPORATION, FIRST FUNDS LLC,)
MERCHANT MONEY TREE, INC.,)
REACH FINANCIAL, LLC and)
FAST TRANSACT, INC.)
d/b/a SIMPLE CASH,)
Defendants)

C.A. No. 6:06-cv-82-LED

ADVANCEME, INC.,)
Plaintiff)
vs.)
AMERIMERCHANT, LLC,)
Defendant.)

VIDEOTAPED DEPOSITION
OF
THOMAS J. LITTLE, IV
WEDNESDAY, SEPTEMBER 6, 2006

<p style="text-align: right;">122</p> <p>1 it, and the performance obligation was</p> <p>2 something that the fulfillment company is</p> <p>3 legally required to do anyway, and that is,</p> <p>4 don't charge the customer until the goods</p> <p>5 are shipped.</p> <p>6 Q. What are the obligations of the catalog</p> <p>7 company?</p> <p>8 A. In what sense?</p> <p>9 Q. In the three-party agreement, did the</p> <p>10 merchant have any obligations to the</p> <p>11 fulfillment company?</p> <p>12 A. The merchant had to pay the fulfillment</p> <p>13 company for their services.</p> <p>14 Q. And the obligations of Litle & Company?</p> <p>15 A. We had to pay the fulfillment company on</p> <p>16 behalf of the merchant and we had our normal</p> <p>17 obligations as -- for routine payment</p> <p>18 processing, as well.</p> <p>19 Q. That were outlined in the Member Agreement?</p> <p>20 A. Yes.</p> <p>21 (One-page document entitled "US</p> <p>22 6,941,281 B1" is marked Exhibit</p> <p>23 Number 11 for Identification.)</p> <p>24 Q. I'm handing you what has been marked Litle</p> <p>25 Exhibit 11, which are the claims of United</p>	<p style="text-align: right;">124</p> <p>1 prepared with two columns. The left column</p> <p>2 lists the claims of the patent, which is the</p> <p>3 claims on Litle Exhibit 11 that you just</p> <p>4 read, 1 and 10, as well as all the other</p> <p>5 claims which are printed in the left column,</p> <p>6 and in the right column, we've cited to</p> <p>7 portions of the Litle documents that you've</p> <p>8 testified here today that refer to the</p> <p>9 elements of the claim that are listed in the</p> <p>10 left-hand column, and what I'd like to ask</p> <p>11 you to do is -- we'll go through this row by</p> <p>12 row and I'd like you to read the right-hand</p> <p>13 column, I'll read the left-hand column to</p> <p>14 you, and ask you to tell us if what we've</p> <p>15 cited in the right-hand column is accurate.</p> <p>16 MR. EDELMAN: Excuse me. Before</p> <p>17 you read that, can I have a representation</p> <p>18 as to whether this was provided --</p> <p>19 MR. GRAY: Yes, it was.</p> <p>20 MR. EDELMAN: It was provided when?</p> <p>21 MR. GRAY: Last week sometime.</p> <p>22 MR. EDELMAN: Okay.</p> <p>23 MR. SMITH: I'd like to note, we're</p> <p>24 not going to object to the line of</p> <p>25 questioning, certainly, but Mr. Litle is</p>
<p style="text-align: right;">123</p> <p>1 States Patent 6941281. It shows -- it's</p> <p>2 just the last page of the Patent Column 7</p> <p>3 and 8.</p> <p>4 MR. EDELMAN: I'll object to the</p> <p>5 extent that you're excerpting a page from an</p> <p>6 entire patent and also not showing Mr. Litle</p> <p>7 the proposed construction of the terms of</p> <p>8 the patent, and also not show him the</p> <p>9 arguments the parties have made with the</p> <p>10 file list of the patent.</p> <p>11 Q. Okay, could you please read Claims 1 and 10</p> <p>12 to yourself?</p> <p>13 MR. SMITH: Just 1 and 10?</p> <p>14 Q. Just 1 and 10.</p> <p>15 A. All right.</p> <p>16 Q. Do you understand those two claims?</p> <p>17 MR. EDELMAN: Same objections.</p> <p>18 A. I think so.</p> <p>19 (Document entitled "Little & Co.,</p> <p>20 Invalidity Claim Chart, United</p> <p>21 States Patent No. 6,941,281" is</p> <p>22 marked Exhibit Number 12 for</p> <p>23 Identification.)</p> <p>24 Q. I'm handing you what has been marked Litle</p> <p>25 Exhibit 12, which is a chart that we have</p>	<p style="text-align: right;">125</p> <p>1 here as a fact witness. He is not rendering</p> <p>2 a conclusion on patent validity. He is here</p> <p>3 simply to testify as a factual witness. I</p> <p>4 just wanted to make that clear before --</p> <p>5 MR. EDELMAN: And again, I want to</p> <p>6 object to the extent that this is being</p> <p>7 shown to Mr. Litle without the discussion of</p> <p>8 what the terms are construed to mean, or the</p> <p>9 parties' construction. It's misleading,</p> <p>10 putting the witness in an impossible</p> <p>11 situation. If you want to do it, go ahead.</p> <p>12 Q. You testified that you understand the terms</p> <p>13 that are used in the patent; is that</p> <p>14 correct?</p> <p>15 MR. EDELMAN: Same objections.</p> <p>16 A. Yeah, I think so, but if we get to some I</p> <p>17 don't understand, then I'll say that.</p> <p>18 Q. Please do. So on Page 1 of Litle Exhibit</p> <p>19 12, in the first row, the claim recites,</p> <p>20 "A method for automated payment,</p> <p>21 comprising."</p> <p>22 A. That's not exactly a complete sentence.</p> <p>23 Q. No, and what we've done, and the reason I</p> <p>24 had you read Claims 1 through 10, is because</p> <p>25 we have broken down the claims --</p>

32 (Pages 122 to 125)

<p style="text-align: right;">126</p> <p>1 A. Okay.</p> <p>2 Q. -- and if you would like to refer back to</p> <p>3 Little Exhibit 11, right there, you can read</p> <p>4 the full claim in context.</p> <p>5 A. Okay.</p> <p>6 Q. So "A method for automated payment," and</p> <p>7 what we've listed here are all the documents</p> <p>8 you've testified about today and stated</p> <p>9 "Little & Company utilized a method for</p> <p>10 automated payments as repayment of</p> <p>11 obligations owed by merchants either for</p> <p>12 postage or cash advances." Is that correct?</p> <p>13 A. Yeah, and also, the reserves and something</p> <p>14 like the Hanover Direct obligation. The</p> <p>15 other kinds of obligations that we've talked</p> <p>16 about. So it isn't just for postage or cash</p> <p>17 advances.</p> <p>18 Q. Was the fulfillment center operation that</p> <p>19 you just testified about, was that a method</p> <p>20 of automated payment?</p> <p>21 A. To the fulfillment center?</p> <p>22 Q. Yes.</p> <p>23 A. Yes.</p> <p>24 Q. What about for the wire fee you discussed?</p> <p>25 A. For the what?</p>	<p style="text-align: right;">128</p> <p>1 MR. EDELMAN: I can put my</p> <p>2 objections on the record.</p> <p>3 MR. SCHUURMAN: Well, make them</p> <p>4 short.</p> <p>5 MR. EDELMAN: I will make them as</p> <p>6 long as I want to make them.</p> <p>7 Q. Based on your understanding after being in</p> <p>8 the card processing industry for about 25</p> <p>9 years --</p> <p>10 A. More than that.</p> <p>11 Q. I'm sorry? Longer than that?</p> <p>12 MR. SMITH: 25-plus.</p> <p>13 Q. 25-plus years.</p> <p>14 MR. EDELMAN: Don't make him a</p> <p>15 patent attorney.</p> <p>16 Q. Do the --</p> <p>17 MR. GRAY: I'm sorry. Is that an</p> <p>18 objection?</p> <p>19 MR. EDELMAN: Yes, it is.</p> <p>20 MR. GRAY: I didn't hear</p> <p>21 "objection."</p> <p>22 MR. EDELMAN: Objection. It</p> <p>23 doesn't make him a patent attorney. Go</p> <p>24 ahead.</p> <p>25 MR. GRAY: Please limit your</p>
<p style="text-align: right;">127</p> <p>1 Q. For the wire fee; was that a method for</p> <p>2 automated payment?</p> <p>3 A. Yes.</p> <p>4 Q. And was equipment -- payments for equipment</p> <p>5 rental and purchase, was that a method for</p> <p>6 automated payment?</p> <p>7 A. Yes.</p> <p>8 Q. Looking now at the second row of the first</p> <p>9 page of Little 12, the claim says "At a</p> <p>10 merchant, accepting a customer identifier as</p> <p>11 payment from the customer." Can you look at</p> <p>12 the right-hand column and tell me whether or</p> <p>13 not those citations from the Little documents</p> <p>14 show that a merchant accepted the customer</p> <p>15 identifier as payment from the customer?</p> <p>16 MR. EDELMAN: Objection. Calls for</p> <p>17 claim construction, beyond the scope of the</p> <p>18 testimony, misleading, lack of foundation.</p> <p>19 Q. I absolutely do not want you to try to</p> <p>20 construe the claims.</p> <p>21 MR. EDELMAN: He has to construe</p> <p>22 the claim to answer the question.</p> <p>23 MR. SCHUURMAN: Why don't you ask</p> <p>24 him during your cross and stop interfering.</p> <p>25 Go ahead.</p>	<p style="text-align: right;">129</p> <p>1 objections to objections as to form.</p> <p>2 MR. EDELMAN: It was a beautiful</p> <p>3 objection as to form.</p> <p>4 Q. Okay. Does the right-hand column, does that</p> <p>5 recite citations to the documents you've</p> <p>6 testified about today that show a merchant</p> <p>7 accepts a customer identifier as payment</p> <p>8 from a customer?</p> <p>9 MR. EDELMAN: Same objection.</p> <p>10 Q. Please take as much time as you need.</p> <p>11 A. And the question is, at that time, did we</p> <p>12 accept the customer identifier as a payment</p> <p>13 for transaction, and the answer is we did.</p> <p>14 Q. The merchants did or Little & Company did?</p> <p>15 A. The merchants accepted it.</p> <p>16 Q. As described in the quotes in this chart</p> <p>17 that you're reading?</p> <p>18 MR. EDELMAN: Same objection.</p> <p>19 A. Right.</p> <p>20 Q. Okay. Looking at the bottom row on Page 2</p> <p>21 of Little Exhibit 12, the claim states "and</p> <p>22 electronically forwarding information</p> <p>23 related to the payment to a computerized</p> <p>24 merchant processor." Could you please tell</p> <p>25 me whether the cites in the right-hand</p>

33 (Pages 126 to 129)

<p style="text-align: right;">130</p> <p>1 column illustrate that Litle & Company 2 electronically -- or that the merchant 3 electronically forwarded information related 4 to the payment to Litle & Company? 5 MR. EDELMAN: Objection. Calls for 6 claim construction, beyond beyond the scope 7 of the deposition, lack of foundation. 8 A. Yes. 9 Q. And to clarify, you said that using -- 10 pursuant to the Member Agreement, which is 11 Litle Exhibit 4, the merchant would accept 12 credit cards, debit cards, and charge cards, 13 such as an American Express card? 14 A. That's correct. 15 Q. And did you also testify that the merchant 16 would accept those cards using a telephone 17 and inputting the credit card number into a 18 computer? 19 A. That's one way, yes. 20 MR. EDELMAN: I just want to put an 21 objection on the record. It wasn't clear to 22 me -- vague and ambiguous as to which 23 merchants you're referring to. 24 Q. Which merchants would accept a credit card 25 via telephone?</p>	<p style="text-align: right;">132</p> <p>1 needed for our process, and then the 2 settlement information might have gone to 3 NDC first and then through NPC, but it was 4 part of our contract, and the settlement 5 information sometimes then went directly to 6 us. Could go any one of those ways. 7 Q. Whether the card was present or not present, 8 was the information related to the payment, 9 such as the card number and the payment 10 amount -- 11 A. Yes. 12 Q. -- was that electronically forwarded? 13 A. Yes. In the card-not-present, it was always 14 directly forwarded to us. 15 Q. Electronically? 16 A. Yes. When it was card-not-present, it was 17 always forwarded electronically, but the 18 route that it took could vary, depending on 19 the circumstances. 20 Q. Okay. Thank you. On Page 3 of Litle 21 Exhibit 12, the next portion of the claim 22 states "at the computerized merchant 23 processor, acquiring the information related 24 to the payment from the merchant, 25 authorizing and settling the payment, and</p>
<p style="text-align: right;">131</p> <p>1 A. That's how the card-not-present merchants 2 received most of their transactions. When 3 they didn't receive them by telephone was 4 when they -- or by an order blank sent 5 through the mail. It was typically at a 6 warehouse sale or something like that. Then 7 they were operating just like a normal 8 retailer operating. 9 Q. And was the process by which those merchants 10 forwarded information, such as the card, 11 information and payment amount, to Litle & 12 Company in the authorization step in Litle 13 10, was that process different for 14 card-not-present or card-present 15 transactions? 16 A. How they actually forwarded the information 17 to us? Yeah. Actually, sometimes we got 18 the settlement information -- well, the 19 authorization process might not -- I can't 20 remember. It depended on the situation. 21 Might not have actually gone through us, but 22 we were responsible for it. It might have 23 gone directly to NDC, and then that 24 information would have come to us through 25 NDC, the authorization information, which we</p>	<p style="text-align: right;">133</p> <p>1 forwarding at least a portion of the payment 2 to a computerized payment receiver as 3 payment of at least a portion of an 4 obligation made by the merchant." 5 A. Uh-huh. 6 Q. Could you please read the citations in the 7 right-hand column, and it flows over on to 8 Page 4 and 5, and tell me whether that 9 accurately recites the portions of the 10 agreements you've testified to today. 11 MR. EDELMAN: I'm sorry. Was your 12 question getting at whether it reflects the 13 language of the Claim 10? 14 MR. GRAY: No. I asked whether it 15 accurately reflects -- 16 MR. EDELMAN: Reflects the 17 agreements. 18 Q. Do you understand my question? 19 A. Yeah. You are asking -- I'll read it back. 20 As I understand it, you're asking me to look 21 at the citations and without trying to 22 interpret whether they comply with the 23 patent or not, you're asking whether those 24 citations are accurate. Is that true? 25 Q. Right.</p>

34 (Pages 130 to 133)

<p style="text-align: right;">134</p> <p>1 MR. EDELMAN: That's fine.</p> <p>2 A. I have a question. In the first sentence,</p> <p>3 it says, at the end, "Management fee to</p> <p>4 Litle & Company, or order." I'm not sure</p> <p>5 that's either what it says or what it should</p> <p>6 have said.</p> <p>7 Q. I believe that is what it says. That's</p> <p>8 Litle Exhibit 7, I believe?</p> <p>9 MR. EDELMAN: I'm sorry. Where is</p> <p>10 the witness referring?</p> <p>11 MR. GRAY: The bottom of Page 3,</p> <p>12 the bottom paragraph in the right column,</p> <p>13 the fourth line down.</p> <p>14 MR. EDELMAN: Oh, I see it.</p> <p>15 Thanks.</p> <p>16 A. Yeah, I think that was a typo and it should</p> <p>17 have probably said -- it should have</p> <p>18 probably referred to what we were thinking</p> <p>19 of setting up or maybe had set up as a</p> <p>20 separate operation to do postage financing.</p> <p>21 Q. Okay. Outside of Litle & Company?</p> <p>22 A. Right. Well, it would have been owned by</p> <p>23 roughly the same people, but it would have</p> <p>24 been a separate operation.</p> <p>25 Q. Do you have any other questions about the</p>	<p style="text-align: right;">136</p> <p>1 differently.</p> <p>2 MR. SMITH: He knows too well.</p> <p>3 MR. EDELMAN: Objection.</p> <p>4 A. And then they charge you for it.</p> <p>5 Q. Your understanding, though, as someone who</p> <p>6 has been in the payment processing</p> <p>7 industry for 25-plus years.</p> <p>8 A. I would say I understand what the left-hand</p> <p>9 column is getting at and the right-hand</p> <p>10 column is a reflection of exactly that --</p> <p>11 Q. Okay.</p> <p>12 A. -- and matches what our documentation was.</p> <p>13 Q. And I'm going to be asking the same</p> <p>14 questions about each row going throughout</p> <p>15 this document. So beginning on Page 5,</p> <p>16 would you please read the citations in the</p> <p>17 right column?</p> <p>18 A. The question is the same; is this an</p> <p>19 accurate representation?</p> <p>20 Q. Yes.</p> <p>21 A. Yes, it is.</p> <p>22 Q. Do those citations accurately reflect your</p> <p>23 understanding of the description in the</p> <p>24 left-hand column?</p> <p>25 MR. EDELMAN: Same objections.</p>
<p style="text-align: right;">135</p> <p>1 citations in the right column?</p> <p>2 A. Yeah. I'd like to look at the definition of</p> <p>3 "prepayments."</p> <p>4 Q. That's in the Member Agreement?</p> <p>5 A. Okay. Yes, that's accurate.</p> <p>6 Q. Do all these citations on Pages 3 through 5</p> <p>7 accurately reflect your understanding of</p> <p>8 what the language in the left column</p> <p>9 requires?</p> <p>10 MR. EDELMAN: Same objections.</p> <p>11 A. As I understand it, yes.</p> <p>12 Q. And do you have any questions about what</p> <p>13 that -- do you understand what the claim</p> <p>14 language in the left-hand column is on those</p> <p>15 pages?</p> <p>16 MR. EDELMAN: Same objection.</p> <p>17 MR. SMITH: Objection. I think</p> <p>18 "claim language" is misleading. He can</p> <p>19 talk about what the words say, but "claim</p> <p>20 language" is a big problem.</p> <p>21 Q. The language that's printed in the left-hand</p> <p>22 column, do the right-hand citations</p> <p>23 accurately reflect your understanding?</p> <p>24 A. As a layman's understanding because lawyers</p> <p>25 always interpret stuff a little</p>	<p style="text-align: right;">137</p> <p>1 A. Yes. I understand the computer payment</p> <p>2 receiver as what I call the third party, and</p> <p>3 if that's the case, yes, it does accurately</p> <p>4 reflect it.</p> <p>5 Q. Looking at the next row, and the left-hand</p> <p>6 column begins with the Number 2 --</p> <p>7 A. Uh-huh.</p> <p>8 Q. -- it says "The method of claim 1 wherein</p> <p>9 the accepting step comprises accepting a</p> <p>10 credit card number as the customer</p> <p>11 identifier." Could you please look at</p> <p>12 what's cited in the right-hand column and</p> <p>13 tell me if that accurately reflects the</p> <p>14 Litle documents and -- well, if it</p> <p>15 accurately reflects that Litle accepted</p> <p>16 credit card numbers? Sorry. Let me start</p> <p>17 over. That the merchants who processed</p> <p>18 through Litle accepted credit card numbers.</p> <p>19 MR. EDELMAN: Same objections.</p> <p>20 MR. SMITH: Do you understand that</p> <p>21 question?</p> <p>22 THE WITNESS: I think so.</p> <p>23 Q. Let me rephrase. Sorry. Could you look at</p> <p>24 the citations in the right-hand column and</p> <p>25 tell me whether those citations accurately</p>

35 (Pages 134 to 137)

<p style="text-align: right;">138</p> <p>1 illustrate that Little & Company processed 2 credit card transactions for merchants? 3 MR. EDELMAN: Same objections. 4 A. Yes. That was our service, processing 5 credit cards for merchants. 6 Q. And on Page 6 of Little Exhibit 12, the 7 bottom row begins with the number 3, could 8 you please look at the right-hand column 9 and, disregarding the first paragraph, 10 please tell me whether those citations -- 11 A. Disregarding the first paragraph? 12 Q. Right, disregarding, and was your testimony 13 earlier that Little would process debit cards 14 on behalf of merchants? 15 A. Yes, but they weren't necessarily identified 16 as debit cards. 17 Q. Right. 18 A. In fact, they were necessarily by the 19 payment networks disguised as debit cards. 20 Q. Could you please read the citations to the 21 documents and tell me whether those 22 citations showed that Little accepted debit 23 cards -- sorry -- that Little processed 24 transactions where debit cards were used at 25 the merchant?</p>	<p style="text-align: right;">140</p> <p>1 computer chip on them that did something. 2 There are cards now that carry changing 3 passwords on it, sort of like an RSA 4 password. There are cards that you can 5 stick your thumb over and it can identify 6 the fact that your thumb print is really 7 your thumb print and not somebody else's. A 8 Smart Card encompasses all kinds of stuff. 9 A Smart Card typically had to be used in 10 conjunction with some sort of terminal 11 device. So we didn't handle any Smart Cards 12 that I know, except that it's also my 13 understanding that some Smart Cards had Visa 14 or MasterCard identification numbers on 15 them, and if that case, if somebody gave 16 those Visa and MasterCard identification 17 numbers over the telephone as a 18 card-not-present card, we would handle it 19 like we'd handle any other credit card, 20 although we wouldn't necessarily know it was 21 a Smart Card. 22 Q. Could you look at Page 8 of Little Exhibit 23 12, the very bottom line, and Page 9, and 24 tell me whether the citations to the Little 25 documents in the right-hand column</p>
<p style="text-align: right;">139</p> <p>1 MR. EDELMAN: Same objections. 2 A. And the question again, is? 3 Q. Whether these citations in the right-hand 4 column illustrate that Little would process 5 debit card transactions for merchants. 6 A. Yes. 7 Q. Do you know what a Smart Card is? 8 A. Yes. 9 Q. What is a Smart Card? 10 A. It's typically a card with a chip on it that 11 carries information about an individual. In 12 those days, they were talking about Smart 13 Cards carrying your medical history and all 14 kinds of stuff on it, and so they would have 15 represented a distributor database of a 16 hundred million nodes, which was in my view 17 ridiculous, and I said so on regular 18 occasions in front of a bunch of credit card 19 people. Now, it's really become a card that 20 carries personal identification 21 information. So a Smart Card is usually an 22 identification device. Prepaid phone cards 23 could be considered Smart Cards because they 24 stored information on them, but I always 25 looked at Smart Cards as those that had a</p>	<p style="text-align: right;">141</p> <p>1 illustrate that Little processed charge card 2 transactions for its merchants. 3 MR. EDELMAN: Same objections as 4 before. 5 A. Yes. 6 Q. And on the row that's numbered 6, would you 7 please read the citations in the right-hand 8 column and tell me whether that accurately 9 illustrates that the merchants for whom 10 Little would process transactions would 11 sometimes accept credit cards at their 12 warehouse sales or otherwise at the merchant 13 location? 14 MR. EDELMAN: Same objections. 15 A. Well, interestingly enough, 16 card-not-present, based on the Visa and 17 MasterCard regulations, the 18 card-not-presents were accepted at the 19 merchant location that was their office or 20 the place where they were accepting orders, 21 and that location, I think in those days, it 22 changed, had to be identified, by city and 23 state. So that was true with 24 card-not-present, but card present is more 25 obvious. Card-presents were done -- one of</p>

36 (Pages 138 to 141)

<p style="text-align: right;">142</p> <p>1 the things that I actually got Visa and</p> <p>2 MasterCard to do was to allow us, instead of</p> <p>3 putting the city and state as an identifier</p> <p>4 for where the card-not-present transactions</p> <p>5 came from, allowing them -- or now, it's a</p> <p>6 requirement -- to put the 800 number of the</p> <p>7 customer service number on it. I don't</p> <p>8 remember at this time whether the actual</p> <p>9 city and state was still required, but this</p> <p>10 was interestingly enough true for</p> <p>11 card-not-present, as well as card-present</p> <p>12 transactions.</p> <p>13 Q. On Page 10, Row 7, would you please tell me</p> <p>14 whether the right-hand column illustrates</p> <p>15 how merchants for whom Litle would process</p> <p>16 transactions would electronically accept</p> <p>17 cards?</p> <p>18 MR. EDELMAN: Same objections.</p> <p>19 MR. SMITH: It looks like, on some</p> <p>20 of this, there's some editorial, as well.</p> <p>21 So within the quotes is what came from the</p> <p>22 documents; is that right?</p> <p>23 MR. GRAY: Right.</p> <p>24 MR. SMITH: Are you asking him to</p> <p>25 verify what is in the parentheses?</p>	<p style="text-align: right;">144</p> <p>1 it religiously and sometimes they didn't do</p> <p>2 so well, but --</p> <p>3 Q. And you earlier -- did you earlier testify</p> <p>4 that some of Litle & Company's merchants</p> <p>5 would have credit card terminals or card</p> <p>6 terminals at the merchant location?</p> <p>7 A. Yes, and we could always identify those</p> <p>8 transactions, because we'd get a terminal</p> <p>9 number and we knew which terminal it was</p> <p>10 used, and so we'd always know that was a</p> <p>11 card-present transaction. We didn't</p> <p>12 necessarily always know that a</p> <p>13 card-not-present transaction was a telephone</p> <p>14 order or a mail order, and I frankly don't</p> <p>15 think Visa and MasterCard cared about that.</p> <p>16 Q. How would you receive that information from</p> <p>17 the terminal?</p> <p>18 A. Well, it could take several routes, but</p> <p>19 electronically, the path that it took</p> <p>20 would -- could take several different</p> <p>21 routes. It could come right from the</p> <p>22 terminal to us. It could go from the</p> <p>23 terminal to NDC. It could go from the</p> <p>24 terminal to NPC, and I don't really remember</p> <p>25 all the ways, but we would change -- over</p>
<p style="text-align: right;">143</p> <p>1 MR. GRAY: No.</p> <p>2 MR. SMITH: Okay. So just -- I</p> <p>3 just want to be --</p> <p>4 MR. GRAY: Well, actually, yes.</p> <p>5 Q. If we say it shows something, I'd like you</p> <p>6 to verify that the quote actually does</p> <p>7 show.</p> <p>8 MR. SMITH: Do you understand what</p> <p>9 they're asking?</p> <p>10 THE WITNESS: Yes.</p> <p>11 A. This is certainly what was said. The idea</p> <p>12 of actually identifying a sale as a mail</p> <p>13 order or a telephone order was often done,</p> <p>14 not necessarily always done. We'd identify</p> <p>15 each merchant or each sub-merchant by our</p> <p>16 internal merchant number that we had that</p> <p>17 the merchant also used. So anything that</p> <p>18 would come under one merchant number would</p> <p>19 be a mail order. Another sub-merchant</p> <p>20 number would be a telephone number. Another</p> <p>21 sub-merchant number would be a card-present</p> <p>22 transaction. We'd roll all that up and</p> <p>23 account for it as one merchant, but we could</p> <p>24 tell where the transactions came from,</p> <p>25 typically, and the merchants sometimes did</p>	<p style="text-align: right;">145</p> <p>1 time, we would change the way we did that.</p> <p>2 For efficiency reasons, for cost reasons,</p> <p>3 for whatever reasons, we would change that,</p> <p>4 but we always received it electronically.</p> <p>5 We probably received some paper</p> <p>6 transactions, but I can't imagine, during</p> <p>7 the whole course of our company, we received</p> <p>8 more than a handful.</p> <p>9 Q. Looking at Row 8 on Page 10 of Litle Exhibit</p> <p>10 12, did Litle & Company ever instruct FNBL</p> <p>11 to accumulate payments until a certain</p> <p>12 amount is reached before forwarding</p> <p>13 payments?</p> <p>14 MR. EDELMAN: Objection. Calls for</p> <p>15 claim construction, mischaracterizes the</p> <p>16 claim.</p> <p>17 Q. Do you understand that language, Mr. Litle,</p> <p>18 "accumulate the payments"?</p> <p>19 MR. EDELMAN: Same objection.</p> <p>20 MR. SMITH: Well, I think it's a</p> <p>21 couple of questions. So do you want him to</p> <p>22 answer your question or do you want him to</p> <p>23 comment on the text that's written here next</p> <p>24 to --</p> <p>25 MR. GRAY: Comment on my question.</p>

37 (Pages 142 to 145)

<p style="text-align: right;">146</p> <p>1 Q. You can disregard the text on the right-hand 2 side. 3 MR. SMITH: Okay. Ignore what is 4 on the paper. Can you read the question 5 back, please. 6 (The following question was read 7 back by the court reporter: 8 "Looking at Row 8 on Page 10 of 9 Little Exhibit 12, did Little & 10 Company ever instruct FNBL to 11 accumulate payments until a certain 12 amount is reached before forwarding 13 payments?") 14 A. I'll answer that in two parts. The first 15 part is, we did accumulate transactions. 16 Some of our customers would send us -- 17 they'd go through a cycle every day. Some 18 of them would go through a cycle every ten 19 minutes, and based on the way transactions 20 are settled, you know, they're all settled 21 in a batch, that's all batch is today, even, 22 and we would settle them through the Visa 23 and MasterCard network. Also, multiple 24 times during the day, but somebody like 25 Micro Warehouse would send us batches every</p>	<p style="text-align: right;">148</p> <p>1 gateway into the networks, and so we would 2 settle with them multiple times. Maybe we'd 3 only settle with them once. I don't 4 remember. I know when we were settling 5 directly through Visa and MasterCard, we did 6 settle with them multiple times. 7 Now, we didn't -- the part of when 8 we would electronically transmit the data to 9 the merchants or the third parties, that was 10 kind of independent of that. The dollar 11 value would accumulate or the dollar value 12 would show up in the First National Bank of 13 Louisville account as a funds transfer in 14 bulk. They were just one big number that 15 came in from Visa, one number that came in 16 from MasterCard, and then we'd sort it out 17 according to our own accounting records. 18 Maybe I don't understand the question. 19 Q. Was there a particular event that would 20 trigger an electronic forwarding of money 21 from FNBL to a merchant or to a third 22 party? 23 A. Our instruction. 24 Q. And what was a typical instruction? 25 A. It would be, at this point in time -- "On</p>
<p style="text-align: right;">147</p> <p>1 ten minutes, and we would accumulate those 2 until it was convenient or until the next 3 time we settled it through the Visa and 4 MasterCard networks. Now, that wasn't 5 necessarily accumulating it until a 6 pre-determined amount was reached. It was 7 accumulating it until either we wanted to 8 get them in under the day's fiscal cutoff or 9 for the next time we -- our next cycle we 10 had to settle through Visa and MasterCard. 11 We probably had three or four times a day, 12 we did that. 13 Q. Okay. 14 A. Now, as far as accumulating payments until a 15 pre-determined amount is reached, we really 16 didn't do that, as far as I can tell. 17 Q. Looking at Row 9 on Page 10, you just 18 described that Little & Company would often 19 instruct FNBL to forward the payments -- or 20 to settle the payments and forward the 21 payments daily; is that correct? 22 A. What we did is we settled the payments -- 23 when I said go to the Visa/MasterCard 24 networks, that, in those days I think was 25 through FNBL. They were operating as our</p>	<p style="text-align: right;">149</p> <p>1 this day, transfer this amount to that 2 account, this account to that account," and 3 it was just a list of amounts and accounts 4 that we would transfer. 5 Q. Would it forward -- would it transfer those 6 amounts daily, for example? 7 A. Yes. That cycle was done every day. 8 Q. Okay. Looking at Line 9 on Page 10, the 9 quote that begins "In consideration of 10 Little & Company making advances," if you 11 look at the second line from the bottom of 12 that quote on Page 11, it says, <i>small Roman</i> 13 <i>Numerals</i> ii, "The daily repayments shall be 14 deducted from daily net proceeds." 15 A. Uh-huh. 16 Q. Does that show that FNBL would forward 17 payments to the merchant daily and deduct -- 18 well, does that show that FNBL would forward 19 payments, net proceeds, daily to the 20 merchant? 21 A. Based on our instruction, we would say 22 "Forward this amount of money, some amount 23 of money, to the merchant." FNBL did not 24 know what the components of that money was. 25 From our point of view, our instructions</p>

38 (Pages 146 to 149)

<p style="text-align: right;">150</p> <p>1 would say "Forward the daily net proceeds, 2 less any of the other obligations of the 3 merchant." The other obligations could be 4 for chargebacks that had actually already 5 been withheld by the networks, it could be 6 for our fees, it could be for payment of 7 postage advances, it could be for payment of 8 terminals, it could be to increase increase 9 the reserve account. It could be all kinds 10 of stuff -- 11 THE VIDEOGRAPHER: Five minutes 12 left on tape. 13 A. -- but when you say FNBL forwarded an 14 amount, they forwarded what we told them. 15 It was the sum of all those components. 16 Q. Would you instruct FNBL to forward those 17 payments to the third party? 18 A. Yes. 19 Q. Daily? 20 A. Yes. 21 Q. For example -- 22 A. It depended. Actually, sometimes we did do 23 it weekly, so we would -- I guess we 24 would -- yeah, most of the time we did it 25 daily. Frankly, we tried to do everything</p>	<p style="text-align: right;">152</p> <p>1 Q. (Cont'd. By Mr. Gray) Mr. Little, I'd like 2 you to look back at Little Exhibit 11, and 3 again, read Claim 10 to yourself slowly. 4 When the language -- when the claim recites 5 "means" for something, that means it's 6 reciting an apparatus or equipment that is 7 used for performing a particular function, 8 and what I'd like to ask you is, for each of 9 those portions of a claim, and I'll begin 10 with "means for accepting a customer 11 identifier as payment for the customer." 12 I'd like you to tell me whether there was 13 standard equipment used in the industry for 14 performing a particular function. Do you 15 understand? 16 A. I think so. 17 MR. EDELMAN: I object. Also, it 18 calls for claim construction. 19 Q. Was there standard equipment used in the 20 industry for accepting a customer identifier 21 as payment from the customer? 22 MR. EDELMAN: Same objections. 23 A. There were standards. There were several 24 types of equipment. The one we dealt with 25 most was an order processing system that was</p>
<p style="text-align: right;">151</p> <p>1 daily. We tried to deal with interchange 2 daily. We tried to deal with all this stuff 3 daily, because that was easiest for the 4 merchant if everything happened all at the 5 same time. We'd sort out the fact that Visa 6 actually charge dollars us for interchange 7 once a month. There were all kinds of 8 different timing arrangements that were in 9 there, and for a merchant to try and figure 10 that all out, it was difficult, so we tried 11 to do everything daily for the merchant. . 12 Q. But if not daily, was it typically on some 13 other periodic basis? 14 A. Yes. 15 MR. GRAY: We can go ahead and 16 change the tape. 17 THE VIDEOGRAPHER: The time is 18 2:08. This is the end of Cassette 2. We 19 are off the record. 20 MR. SMITH: We'll take five. 21 (Recess.) 22 THE VIDEOGRAPHER: The time is 23 2:17. This is the beginning of Cassette 24 Number 3 in the deposition of Thomas Little. 25 We are on the record.</p>	<p style="text-align: right;">153</p> <p>1 basically a terminal and an operator would 2 key in the order. The software that managed 3 that computerized order entry system was 4 often sold to the direct marketers by a 5 third party, and there are limited numbers. 6 Sometimes direct marketers wrote their own 7 software. They used different equipment, 8 but it was all basically what one would 9 consider a relatively standard order entry 10 system. 11 Q. And to clarify, was that a computer keyboard 12 where someone would input a number -- 13 A. Yes. 14 Q. -- into a computer? 15 A. Uh-huh. That was one way. 16 Q. What was another way? 17 A. Another way was to actually use terminals 18 and probably five years before the period of 19 time we're talking about, which I think is 20 1992, that range, the computerized order 21 entry systems really didn't accept credit 22 cards, so terminals were used in parallel 23 with the computerized order entry system, 24 but by 1992, it was generally order entry 25 systems that were built to accept credit</p>

39 (Pages 150 to 153)

<p style="text-align: right;">154</p> <p>1 cards, to check the validity, the mechanical 2 validity. The Visa and MasterCard 3 transactions were 16 characters long and 4 started with a 4 and a 5 respectively, and 5 had a 10-check digit at the end, and that 6 kind of stuff, and that was most of the 7 card-not-present transactions. 8 Q. And Litle & Company processed -- did Litle & 9 Company process card transactions for 10 merchants who accepted credit cards or cards 11 via terminals or computer keyboard input? 12 A. Yes. The terminals was -- we certainly 13 did. That was a smaller part of our 14 business. 15 Q. What sort of hardware did merchants use to 16 electronically forward information related 17 to the payment to Litle? 18 A. They used -- on their computers, they had 19 connections to either -- in those days, they 20 had connections to either a frame relay 21 system, which was something supplied by the 22 telephone company, or a regular dial-up 23 telephone, and those transactions would get 24 conveyed to us via those kinds of 25 telephone-operated networks.</p>	<p style="text-align: right;">156</p> <p>1 the -- 2 Q. Right. For example, computers, network and 3 modem. 4 A. Well, that's it. It was the way the 5 transaction was captured, whether it was in 6 an order entry system or a terminal, the way 7 it was transmitted, whether it was connected 8 by modem or to a lease line -- a modem to a 9 dial-up line. It was actually modems to a 10 frame relay line or connected to a lease 11 line at the merchant's end. Basically, the 12 reverse of that at our end to receive the 13 information, and the information went back 14 and forth. When a merchant would send in a 15 settlement file, for example, then we had to 16 send back a confirmation that what they 17 thought they sent us, we actually got, and 18 that was the moment in time, when we sent 19 back that confirmation, when we owned the 20 transactions. 21 Q. And you testified earlier to this, but what 22 hardware was used -- sorry. Let me start 23 over. How was the money forwarded from FNBL 24 to the third party in your diagram in 25 Exhibit 10?</p>
<p style="text-align: right;">155</p> <p>1 Q. Okay. How would Litle receive that 2 information from the merchant? 3 A. We would also be connected to either a plain 4 dial-up line, and the merchant would call 5 the number, our number, basically, make a 6 telephone call, and we'd have a modem 7 connected to that and we'd receive the 8 merchant's data, or we'd be connected to the 9 other end of a frame relay circuit and 10 accept the information from the merchant, or 11 in some cases, we actually had a lease line 12 between the merchant and us, and so it was 13 just like a -- the phone company provided 14 it, but it was like a wire between us and 15 the merchant. 16 Q. What hardware was used for authorizing and 17 settling the payment at each of the entities 18 involved in the process? 19 MR. EDELMAN: Objection. Calls for 20 claim construction. 21 A. The -- what hardware was -- 22 Q. -- was used by each entity in the process 23 outlined in Litle Exhibit 10, and I'm just 24 asking generally. 25 MR. SMITH: You mean, each of</p>	<p style="text-align: right;">157</p> <p>1 A. Either through a wire transfer, which was, 2 a wire transfer system is operated by the 3 Fed -- it's the way banks typically transfer 4 money between each other -- or by the ACH -- 5 an ACH system, which means automated 6 clearinghouse, and I think that's operated 7 by the Fed -- no. It's operated by an 8 organization called NACHA, National 9 Automated Clearinghouse Association, or 10 something like that, and which really did 11 the same thing as a wire did, except it took 12 a day longer. 13 Q. In each of the examples that you've 14 testified to here today, is the equipment 15 that is used by each of the entities in 16 Litle Exhibit 10, is that -- is it the same 17 equipment? 18 A. Pretty much. Depending on the 19 circumstance. If it was the same 20 circumstance, it would be the same type of 21 equipment. I mean, we would have ten people 22 transmitting files at the same time, so 23 there were ten instances in the same 24 equipment, but -- 25 Q. Okay. In other words, did the equipment</p>

40 (Pages 154 to 157)

<p style="text-align: right;">158</p> <p>1 change between the Hanover finance situation</p> <p>2 and the postage finance situation, for</p> <p>3 example?</p> <p>4 A. It could because it just depended on how</p> <p>5 Hanover would receive payments. Maybe they</p> <p>6 received an ACH. Maybe they received a</p> <p>7 wire. I don't remember how they did that.</p> <p>8 Q. Either way, it was an electronic transfer?</p> <p>9 A. Yes.</p> <p>10 MR. GRAY: I'll pass the witness.</p> <p>11 (Discussion off the record.)</p> <p>12 CROSS-EXAMINATION</p> <p>13 by Mr. Edelman:</p> <p>14 Q. Good afternoon.</p> <p>15 A. Hi.</p> <p>16 Q. I am Mike Edelman. I will be asking you</p> <p>17 questions on behalf of Advanceme. Could you</p> <p>18 put Little Exhibit 11 back in front of you?</p> <p>19 Now, I believe you testified earlier that</p> <p>20 you thought, at least from your perspective,</p> <p>21 that you understood what Claims 1 and 10</p> <p>22 encompassed?</p> <p>23 A. Uh-huh.</p> <p>24 Q. Is that correct?</p> <p>25 A. Not from a lawyer's point of view, but</p>	<p style="text-align: right;">160</p> <p>1 we haven't really gotten to that aspect of</p> <p>2 what we -- what we think our service will</p> <p>3 be. I don't know if we'll ever perform</p> <p>4 that. We may. We may not.</p> <p>5 Q. When you say "that," do you mean providing</p> <p>6 payments to third parties?</p> <p>7 A. Yes.</p> <p>8 Q. Do you have an option that's advertised on</p> <p>9 your website called Dynamic Settlement?</p> <p>10 A. It's not active. Dynamic Settlement, no, we</p> <p>11 don't --</p> <p>12 Q. What is Dynamic Settlement?</p> <p>13 A. Huh?</p> <p>14 Q. What is Dynamic Settlement?</p> <p>15 A. Actually, I don't remember what Dynamic</p> <p>16 Settlement is.</p> <p>17 Q. Doesn't Dynamic Settlement, as described on</p> <p>18 your website, describe payments to third</p> <p>19 parties?</p> <p>20 MR. SMITH: Objection. Same</p> <p>21 instruction. You're here in a personal</p> <p>22 capacity; not as a representative of the new</p> <p>23 Little & Co.</p> <p>24 A. Okay. Providing payments to third parties.</p> <p>25 We do that in the sense that we maintain</p>
<p style="text-align: right;">159</p> <p>1 from --</p> <p>2 Q. From your point of view?</p> <p>3 A. -- from a layman's point of view, yeah.</p> <p>4 Q. All right. Does your company perform the</p> <p>5 inventions in Claims in 1 and 10?</p> <p>6 MR. SMITH: I'm going to object and</p> <p>7 I'm going to instruct the witness not to</p> <p>8 answer to the extent that the answer would</p> <p>9 reveal confidential proprietary information.</p> <p>10 To the extent that it would not it, you may</p> <p>11 answer. He's here in his personal capacity;</p> <p>12 not as a representative of the current Little</p> <p>13 & Company. So with that caveat, the</p> <p>14 question again?</p> <p>15 A. So I'm going to get sued if I say yes;</p> <p>16 right?</p> <p>17 Q. I'm asking --</p> <p>18 A. No, we don't.</p> <p>19 Q. You do not, and why do you not perform the</p> <p>20 inventions in Claims 1 and 10 in your</p> <p>21 current business?</p> <p>22 A. Because our company is a relatively new</p> <p>23 company and the process by which we build</p> <p>24 our system is building it up sequentially to</p> <p>25 serve the needs of our early customers, and</p>	<p style="text-align: right;">161</p> <p>1 reserves, we maintain -- we do some of the</p> <p>2 stuff we're talking about. We don't do</p> <p>3 postage financing.</p> <p>4 Q. Do you believe that maintaining reserves for</p> <p>5 third parties is not performing Claims 1 and</p> <p>6 10?</p> <p>7 MR. SMITH: Objection.</p> <p>8 A. I think that's -- I think that's an</p> <p>9 interpretation of the patent and that's not</p> <p>10 why I'm here.</p> <p>11 Q. You didn't seem to have any problem with the</p> <p>12 other side's questions.</p> <p>13 MR. SMITH: Object to the</p> <p>14 characterizations.</p> <p>15 MR. GRAY: I never asked --</p> <p>16 Q. Mr. Little, is there any way to perform</p> <p>17 Claims 1 and 10, other than postage</p> <p>18 financing?</p> <p>19 MR. SMITH: Objection. You're</p> <p>20 asking about his interpretation again.</p> <p>21 Q. In your layman's perspective.</p> <p>22 A. Is there any way to what?</p> <p>23 Q. Perform Claims 1 and 10, other than by</p> <p>24 postage financing.</p> <p>25 A. Sure.</p>

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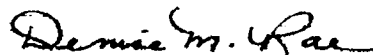
1 COMMONWEALTH OF MASSACHUSETTS

2 MIDDLESEX, SS.

3
4 I, Denise M. Rae, a Certified
5 Shorthand Reporter and Notary Public duly
6 commissioned and qualified within and for
7 the Commonwealth of Massachusetts, do hereby
8 certify:

9 That THOMAS J. LITTLE, IV, the
10 witness whose deposition is hereinbefore set
11 forth, was duly sworn by me, and that such
12 deposition is a true record of the testimony
13 given by the witness to the best of my
14 skill, knowledge, and ability.

15 IN WITNESS WHEREOF, I have hereunto
16 set my hand and my affixed notarial seal
17 this 8th day of September, 2006.

18
19 

20 -----
Denise M. Rae

21 Notary Public

22
23 My commission expires:

24 January 16, 2009
25